

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRIAN F. STANLEY, <sup>1</sup>	§
	§
Petitioner Below-	§ No. 351, 2008
Appellant,	§
	§
v.	§ Court Below—Family Court
	§ of the State of Delaware,
KIMBERLY S. STANLEY,	§ in and for New Castle County
	§ File No. CN01-06639
Respondent Below-	§
Appellee.	§

Submitted: December 12, 2008

Decided: March 10, 2009

Before **BERGER, JACOBS**, and **RIDGELY**, Justices.

**ORDER**

This 10<sup>th</sup> day of March 2009, after careful consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The appellant, Brian Stanley (Father), filed this appeal from a Family Court order dated June 13, 2008, which affirmed a Commissioner's order modifying Father's child support obligation. Father contends that the Family Court erred as a matter of law and abused its discretion by retroactively modifying the parties' written child support agreement. We

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<sup>1</sup> The Court previously assigned pseudonyms to the parties pursuant to Supreme Court Rule 7(d).

find no merit to Father's appeal. Accordingly, we affirm the Family Court's judgment.

(2) The record reflects that the parties were divorced on August 2, 2001. On October 1, 2001, a Family Court judge entered a Consent Child Support Order, which reflected the parties' agreement obligating Father to pay \$1217 per month to support the parties' two children.<sup>2</sup> Shortly thereafter, on November 19, 2001, Father filed a petition to modify his child support obligation, which was subsequently dismissed on December 7, 2006 due to lack of prosecution. On January 29, 2003, Father filed another petition for support modification. On August 10, 2004, Mother filed a petition for support modification. Neither party appeared for the scheduled mediation hearing, so both petitions were dismissed on December 7, 2004.<sup>3</sup> On June 5, 2007, Mother filed a "Motion to Redirect Payments through the Division of Child Support Enforcement," which sought enforcement of the original 2001 child support order.

(3) On October 1, 2007, Father filed a Motion to Reopen the Family Court's December 7, 2006 judgment dismissing his petition to

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<sup>2</sup> The parties' two children were born in 1988 and 1990, respectively, and have since become emancipated.

<sup>3</sup> Mother informed the Family Court that she was withdrawing her petition because Father was undergoing cancer treatment, and she did not want to pursue her petition while he was sick.

modify for lack of prosecution. In his motion to reopen, Father argued that the parties had entered into a written agreement in April 2003 reducing Father's monthly child support obligation to \$383. After Father moved to reopen the judgment, Mother filed a petition for child support arrears and a rule to show cause, which sought verification of Father's income through the years and requested payment of back support in accordance with Father's increased income. Mother also requested payment for unreimbursed medical expenses.<sup>4</sup> The Family Court granted the motion to reopen its 2006 judgment dismissing Father's 2001 petition to modify child support.

(4) On March 17, 2008, the Family Court Commissioner held a hearing on the issue of child support. The Commissioner concluded that the parties had negotiated an agreement in April 2003 to reduce Father's child support payment from \$1217 per month to \$383 per month, although the agreement was never formalized by a Family Court order. The Commissioner concluded that this agreement was valid, but only until June 2006.<sup>5</sup> After that date, the Commissioner held, Father's support obligation

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<sup>4</sup> Father conceded the amount of unreimbursed medical expenses. This is not an issue on appeal.

<sup>5</sup> In part, the Commissioner selected June 2006 as the date the parties' agreement ended because it was the mid-point between Mother's first petition to modify support, which she dismissed because Father was undergoing cancer treatment at the time, and her second petition to enforce the original support order. More importantly, the Commissioner noted and the Family Court found on review, it was in mid-2006 when Father's income significantly increased.

should have been increased to reflect his income level during subsequent, specified periods. Father objected to the Commissioner's findings, which were affirmed by a Family Court judge. This appeal followed.

(5) Father raises two arguments in his opening brief on appeal. First, he argues that the Family Court erred as a matter of law by retroactively altering the terms of the parties' April 2003 agreement in the absence of a petition for modification of support filed by Mother. Father also argues that the Family Court abused its discretion in concluding that the parties' agreement could be modified retroactively based on Father's alleged failure to fulfill his statutory obligation<sup>6</sup> to keep Mother informed of changes in his financial circumstances. We find no merit to either issue.

(6) We reject Father's contention that the Family Court erred in modifying his child support obligation because there was no petition to modify child support pending before it. At *Father's* request, the Family Court reopened its 2006 judgment dismissing Father's 2001 petition to modify the child support order, which obligated Father to pay \$1217 per month in support. Having reopened the child support judgment, it was within the Family Court's discretion to hear any evidence it found relevant

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<sup>6</sup> 13 Del. C. § 513(c)(1). Among other things, Section 513(c)(1) provides that, following the entry of any order for support, the parties must notify each other in writing of every change in circumstance that might materially affect the existing support.

to determining an appropriate child support award that was in the best interests of the parties' children.<sup>7</sup> Moreover, Father's contention that he was denied due process because he was not properly notified of Mother's intent to seek a modification of their 2003 agreement was not raised to the Family Court in the first instance. We will not address that claim for the first time on appeal.<sup>8</sup>

(7) Father's second argument on appeal is that the Family Court erred in modifying the parties' child support agreement based on its conclusion that Father had failed to fulfill his statutory obligation to keep Mother informed of his change of income when the record was devoid of any evidence in support of that finding. On appeal, however, this Court will not disturb a trial court's factual findings unless those findings are clearly wrong and justice requires their overturn.<sup>9</sup> We find that the Family Court's factual finding is sufficiently supported by the record because Mother testified at the hearing, and also provided documentary evidence, that she had requested Father to provide updated information regarding his income but that she never received a response. Father did not testify that the information was ever provided. Accordingly, it was logical for the Family

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<sup>7</sup> See 88 C.J.S. *Trial* § 204 (2008); *Solis v. Tea*, 468 A.2d 1276, 1282-83 (Del. 1983).

<sup>8</sup> Del. Supr. Ct. R. 8.

<sup>9</sup> *Solis v. Tea*, 468 A.2d at 1279.

Court to deduce from the testimony that Father had not informed Mother that his income through the years had increased well beyond the amount Father was earning at the time the parties entered their agreement in 2003. Accordingly, we find no merit to that argument.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice